

counterclaim for breach of contract, as there are no factual issues in dispute regarding Progressive's breach of contract, and its breach was not justifiable under any legal theory.

This motion is based upon the accompanying Statement of Facts/Memorandum of Law, the Certifications of Jack Lauder milk and Gary Zullig and accompanying exhibits, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing. Defendants respectfully request Oral Argument.

Respectfully submitted,

/s/ Jeffrey L. Karlin

Robert L. Zisk, Esq.

Eric L. Yaffe, Esq.

Jeffrey L. Karlin, Esq.

Ashley M. Ewald, Esq.

GRAY, PLANT, MOOTY, MOOTY &
BENNETT, P.A.

2600 Virginia Avenue, N.W., Suite 1111

Washington, DC 20037-1931

Telephone: (202) 295-2200

Facsimile: (202) 295-2257

eric.yaffe@gpmlaw.com

jeffrey.karlin@gpmlaw.com

ashley.ewald@gpmlaw.com

Daniel F. Gourash, Esq. (0032413)

SEELEY, SAVIDGE, EBERT &
GOURASH CO.

26600 Detroit Road

Cleveland, Ohio 44145-2397

Telephone: (216) 566-8200

Facsimile: (216) 566-0213

rdanderle@sseg-law.com

Dated: June 5, 2009

Attorneys for Defendants and Plaintiffs-in-Counterclaim

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Jeffrey L. Karlin